



## CITY OF DURHAM | NORTH CAROLINA

**Date:** January 30, 2013

**To:** Thomas J. Bonfield, City Manager  
**Through:** W. Bowman Ferguson, Deputy City Manager  
**From:** Marvin G. Williams, Public Works Director

**Subject:** Update - Stormwater Policy Options Regarding the Jordan Lake Rules and Proposed Statewide Rule Changes

### Executive Summary

The Piedmont Triad Regional Council (PTRC) and the Triad Real Estate and Building Industry Coalition (TRIBEC) hosted a meeting January 8, 2013 with local elected officials in the Haw River Basin to discuss the progression and evolution of the Jordan Lake Nutrient Management Strategy. Local government representatives were asked to consider support for changes to the Jordan Lake Rules presented at the meeting and to possibly expand those changes to a statewide level. Public Works staff was invited to attend to provide input.

The Public Works Department provided an information update at the November 8, 2012 work session regarding questions received from the North Carolina League of Municipalities. Additional questions have since been asked at the meeting with PTRC and TRIBEC noted above. The Department supports several specific modifications to the Jordan Lake rules as noted below. Many modifications were proposed at the meeting. The position of the Public Works Department is indicated by color coding (**Green** – in agreement, **Yellow** – neutral, **Red** – opposed to the change). Staff comments or acceptable alternate are noted in italics for each individual proposed rule change. Staff comments are the same for the proposed statewide changes and the individual Jordan Lake rule changes.

### Recommendation

The Administration recommends that the City Council adopt the policy positions regarding the Jordan Lake Rules and proposed statewide rule changes.

### Background

Relief from the deadlines associated with the Jordan Lake Nutrient Management Strategy has been obtained for both the wastewater discharge and the new development requirements. In 2011 the General Assembly extended the time period for compliance with the wastewater discharge requirements by two years to calendar year 2018. This extension was granted for any wastewater discharging facility that had received an authorization for the construction, installation or alteration of the wastewater facility by December 31, 2016. (Session Law 2011-394). The South Durham Water Reclamation Facility is subject to these requirements. In 2012, the General Assembly extended the compliance date for adopting a new development program to August 10, 2014. This was also a two year extension and affects jurisdictions within the Jordan Lake watershed.

The PTRC, TRIBEC and others will be involved with bringing forward modifications to the Jordan Lake Nutrient Management Strategy in the General Assembly in 2013. In preparation

for potential legislative requests for information, Public Works has developed the following responses to the policy options presented by PTRC and TRIBEC. They are as follows:

## **Regulatory Reform Initiatives Relating to Jordan Lake Nutrient Management Rules and NCDENR DWQ**

**Jordan Lake Rules:** The Jordan Lake Rules are a collection of 13 rules, 4 of which pertain to urban areas. Listed below are several suggested changes to 3 of those urban rules (Stream Buffers, New Development and Existing Development), several companion regulatory reforms at NCDENR Division of Water Quality (DWQ), and suggestions for making the Jordan Lake Rule changes effective for other basins.

### **I. Stream Buffer Rule**

- 1) Give implementation responsibility back to DENR unless the local government requests implementation authority for some or all of the stream buffer rule.
- 2) Change permitted use table to...
  - a) Exempt non-electric (water, sewer, telephone and gas) installation in buffer Zone 2 (outer 20'), just as other (electric) utilities are exempt. *(Staff is supportive of the buffer and utility easement overlapping with the utility out of the buffer.)*
  - b) Allow stream piping where allowed by an ACOE permit. *(Corps 404 permit requires issuance of state 401 water quality certification. If a 401 wq certification is not issued by the state it would be issued by EPA.)*

### **II. Existing Development Rule**

- 1) Clarify Intent by...
  - a) Adding language explicitly stating that local governments will not be required to install a prescribed number of retrofits annually. While local governments may choose to pursue this option, it should not be implied that it might become a requirement in department practice.
  - b) Deleting language suggesting removal/reduction of impervious surface during redevelopment. While local governments may choose to pursue this option, it should not be implied that it might become a requirement in department practice.
  - c) Deleting language suggesting construction of new water quality BMPs to treat previously developed private property. While local governments may choose to pursue this option, it should not be implied that it might become a requirement in department practice. *(Durham's load reduction requirements necessitate treatment of existing development to meet targets. Deleting this language would create inequities within Durham between Falls/Jordan basins.)*
- 2) Science Advisory Board (SAB)
  - a) Make the SAB report directly to EMC (not thru DWQ)
  - b) Add more stakeholders and set a system of expiring terms and term limits. It is now dealing with existing development in other basins as well, so it needs more seats for local government and private sector seats.

c) Consider dedicated funding for the SAB's work, such as the Nutrient Source Allocation study.

3) Implement Phase 2 in 2019. This...

a) reinstates the original 2-year separation between implementation of Existing Development Rule and Point Source Rule (3-1-2017) that was put in place because results from Point Source measures will affect what Existing Development measures are ultimately required.

and

b) gives the SAB and DWQ more time to come up with model program with more effective approaches than exist today.

### III. New Development Rule

1) Grandfather existing impervious surface in redevelopment projects to promote redevelopment. Clarify intent that only new impervious surface is treated, by clarifying "project site". *(Clarification of project site is not needed. The rule as written supports current efforts by local governments and should not be changed legislatively because of inconsistent interpretations by NCDENR staff. This inconsistency will be handled administratively by NCDENR management.)*

2) Change land disturbance trigger back to 1 acre, as in NPDES Phase 2, Neuse and Tar-Pam rules. This will help promote desirable infill development. *(This would create even greater disparity with the Falls Basin's disturbance limits of .5 acre residential and 12,000 square feet for commercial.)*

### IV. Other Statewide Regulatory Reform Initiatives for DENR DWQ...

1) Streamline permit review process

a) When NCDENR and ACOE both issue permits for the same activity (e.g. stream piping), let the ACOE permit suffice as the state permit and authorized buffer impact. *(Inconsistent with law-both permits are issued.)*

b) If a 401 permit is required, require DENR to issue Stream Buffer Impact letter rather than local government.

c) Amend NCDENR's "minimization and avoidance" language for stream piping to give DWQ direction to allow reasonable piping (e.g., permit any piping approved by ACOE; list conditions under which piping should be allowed such as when the stream is already piped upstream and/or downstream.) *(Support w/ distance threshold of 200 feet or less.)*

d) Prohibit DENR from exceeding their authority by making site design comments regarding stream buffers and piping, especially when the local government has delegated permitting authority. This is the purview of local government.

2) Clarify that SL 2011-343 does not prevent local governments from setting up nutrients banks or mitigation banks for stream *buffer* impacts. (SL 2011-343 prohibits local government from setting up new mitigation banks for *compensatory* mitigation for *wetland and stream impacts*.)

- 3) Nitrogen & Phosphorus EEP fee escalation protections (e.g. a Cost of Living cap or supermajority EMC vote.)

#### **V. Statewide Regulatory Reform Option for I, II 1-3, and III Above:**

Existing and Future Nutrient Management Rules Shall...

- 1) Grandfather existing impervious surface in redevelopment projects, and require only new impervious surface is treated.
- 2) Not reduce land disturbance trigger below 1 acre.
- 3) Not mandate implementation responsibility of stream buffer rules to the local governments. Local Governments may request implementation authority for some or all of it, as with other DENR rules.
- 4) Not prohibit in stream buffers
  - a) non-electric utility installation in outer buffer Zones
  - b) stream piping allowed by ACOE
- 5) Not require the following for Local Government Existing Development Rules
  - a) local governments to install a prescribed number of retrofits annually.
  - b) removal/reduction of impervious surface during redevelopment.
  - c) construction of new water quality BMPs to treat previously developed private property.
- d) While local governments may choose to pursue options V.5.a.-c., they should not be explicit or implied requirements in nutrient management rules. *Position is as noted above.*
- 6) Establish Statewide Science Advisory Board (SAB)
  - a) Make it report directly to EMC (not thru DWQ)
  - b) Add more local public and private sector stakeholders and set a system of expiring terms and term limits. It is now dealing with existing development in other basins, not just Jordan Lake, so it needs more local government and private sector seats.
  - c) Dedicate funding for its activities.
- 7) Note: Some participants in the Falls Lake basin may have concerns with some of these items affecting the Falls Lake Rules retroactively.

#### **We are not recommending**

- Amendments to the 4<sup>th</sup> urban rule, the Point Source Rule (affecting mostly waste water treatment plants and industrial plants.)
- Eliminating the rules altogether. *(Support the position of not eliminating the rules completely.)*
- "Redoing the science" with new modeling software, water quality data or impairment review. *(Support not redoing the science or modeling-this would result in much higher reduction requirements.)*
- Infrastructure approaches at Jordan Lake, such as a water treatment plant or removal of causeway. *(Staff supports treatment processes on or near the lake)*

#### **The Future**

There are other areas of investigation being pursued which might affect best practices for nutrient management in Jordan Lake and other basins. These may be worthy of

discussion at a later date, such as the Science Advisory Board's study of nutrient contribution by land-use and Durham's algae harvesting pilot project.

**Alternatives**

City Council could choose not to receive this report and adopt the policy positions in the report. This would put the City at a distinct disadvantage when proposed Jordan Rule changes and statewide rule changes are considered in the 2013 legislative session.

**Financial Impact**

None

**SDBE Summary**

Not applicable